

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PUBLIC
amendment of ARM 38.5.1902,)	HEARING ON PROPOSED
pertaining to cogeneration and)	AMENDMENT
small power production)	

TO: All Concerned Persons

1. On August 28, 2007, at 1:30 p.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the amendment of ARM 38.5.1902.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the PSC no later than 5:00 p.m. on August 21, 2007, to advise us of the nature of the accommodation that you need. Please contact, Connie Jones, commission secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618, e-mail conniej@mt.gov.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

38.5.1902 GENERAL PROVISIONS

(1) through (4) remain the same.

Proposed Amendments -- Alternative A

(5) All purchases and sales of electric power between a utility and a qualifying facility shall be accomplished according to the terms of a written contract between the parties or in accordance with the standard tariff provisions as approved by the commission. A long-term contract for purchases and sales of energy and capacity between a utility and a qualifying facility greater than ~~3-MW~~ 10MW in size shall be contingent upon selection of the qualifying facility by a utility through an all-source competitive solicitation conducted in accordance with the provisions of ARM 38.5.2001 - 38.5.2012. Between competitive solicitations, purchases and sales of energy and capacity between a utility and a qualifying facility greater than ~~3-MW~~ 10MW in size shall be accomplished in accordance with the short-term standard avoided cost tariff approved by the commission or through negotiation of a short-term written contract. The utility shall recompute the short-term and long-term standard tariffed avoided cost rates following public review and comment on each

least cost plan filing, ARM 38.5.2001 - 38.5.2012. The recomputed avoided cost rates should reflect any amendments to the plan due to the comments of the commission and the public. If the qualifying facility is not selected, or does not participate, in the first available competitive solicitation, purchases and sales of energy and capacity shall continue only according to the terms of a newly negotiated short-term written contract or in accordance with the newly computed, short-term standard tariffed avoided cost rates. Long-term contracts for purchases and sales of energy and capacity between a utility and a qualifying facility ~~3-MW~~ 10MW or less may be accomplished according to standard tariffed rates as approved by the commission. The contract shall specify:

(a) through (j) remain the same.

Proposed Amendments -- Alternative B

(5) All purchases and sales of electric power between a utility and a qualifying facility shall be accomplished according to the terms of a written contract between the parties or in accordance with the standard tariff provisions as approved by the commission. A long-term contract for purchases and sales of energy and capacity between a utility and a qualifying facility greater than ~~3-MW~~ 10MW in size shall be contingent upon selection of the qualifying facility by a utility through an all-source competitive solicitation conducted in accordance with the provisions of ARM 38.5.2001 - 38.5.2012. Between competitive solicitations, purchases and sales of energy and capacity between a utility and a qualifying facility greater than ~~3-MW~~ 10MW in size shall be accomplished in accordance with ~~the short-term standard avoided cost tariff approved by the commission or through~~ negotiation of a short-term written contract. The utility shall recompute the ~~short-term and long-term standard tariffed avoided cost rates~~ following public review and comment on each least cost plan filing, ARM 38.5.2001 - 38.5.2012. The recomputed avoided cost rates should reflect any amendments to the plan due to the comments of the commission and the public. If the qualifying facility is not selected, or does not participate, in the first available competitive solicitation, purchases and sales of energy and capacity shall continue only according to the terms of a newly negotiated short-term written contract ~~or in accordance with the newly computed, short-term standard tariffed avoided cost rates~~. Long-term contracts for purchases and sales of energy and capacity between a utility and a qualifying facility ~~3-MW~~ 10MW or less may be accomplished according to standard tariffed rates as approved by the commission. The contract shall specify:

(a) through (j) remain the same.

Proposed Amendments -- Alternative C

(5) All purchases and sales of electric power between a utility and a qualifying facility shall be accomplished according to the terms of a written contract between the parties or in accordance with the standard tariff provisions as approved by the commission. A long-term contract for purchases and sales of energy and capacity between a utility and a qualifying facility ~~greater than 3MW in size~~ shall be contingent upon selection of the qualifying facility by a utility through an all-source

competitive solicitation conducted in accordance with the provisions of ARM 38.5.2001 - 38.5.2012. Between competitive solicitations, purchases and sales of energy and capacity between a utility and a qualifying facility ~~greater than 3MW in size~~ shall be accomplished in accordance with the ~~short-term~~ standard avoided cost tariff approved by the commission ~~or~~ through negotiation of a short-term written contract. The utility shall recompute the ~~short-term and long-term~~ standard tariffed avoided cost rates following public review and comment on each least cost plan filing, ARM 38.5.2001 - 38.5.2012. The recomputed avoided cost rates should reflect any amendments to the plan due to the comments of the commission and the public. If the qualifying facility is not selected, or does not participate, in the first available competitive solicitation, purchases and sales of energy and capacity shall continue only according to the terms of a newly negotiated short-term written contract ~~or in accordance with the newly computed, short-term standard tariffed avoided cost rates.~~ Long-term contracts for purchases and sales of energy and capacity between a utility and a qualifying facility ~~3MW or less~~ may be accomplished according to standard tariffed rates as approved by the commission. The contract shall specify:

(a) through (j) remain the same.

(6) remains the same.

AUTH: 69-3-103, 69-3-604, MCA

IMP: 69-3-102, 69-3-602, 69-3-603, 69-3-604, MCA

4. Amendment of ARM 38.5.1902 is necessary because provisions within it (interlined) may be outdated from a public policy standpoint or may be inconsistent with current federal and state law. Formal discussion in this rulemaking setting appears to be the best forum for resolving those issues. Alternative amendments are necessary to provide a broad scope of proposals, which may eliminate the need to renote the proposal.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than August 28, 2007, or may be submitted to the commission through the commission's web-based comment form at <http://psc.mt.gov> (go to "consumer assistance," "talk to us," "pending proceeding comments," then complete and submit the form) no later than August 28, 2007. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-07.05.2-RUL.")

6. The commission, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

7. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703,

Helena, Montana 59620-1703, phone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

8. The commission maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the commission. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines, motor carriers, and rail carriers; and administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Connie Jones at (406) 444-7618, e-mailed to conniej@mt.gov, or may be made by completing a request form at any rules hearing held by the commission.

9. The bill sponsor notice requirements of § 2-4-302, MCA, do not apply.

/s/ Greg Jergeson

Greg Jergeson, Chairman
Public Service Commission

/s/ Robin A. McHugh

Reviewed by Robin A. McHugh

Certified to the Secretary of State, July 16, 2007.